IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9562 of 2003
with
SCA NOS.16670 TO 16672 OF 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAVNAGAR MUNICIPAL CORPORATION - Petitioner(s)
Versus
VANDANABEN NAVALBHAI VYAS & 3 - Respondent(s)

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Appearance :
MR RM CHHAYA for Petitioner(s) : 1,
MR DHARMESH V SHAH for Respondent(s) : 1 - 4.
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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 17/02/2006

ORAL JUDGMENT

1. Heard the learned Advocate, Mr.R.M.Chhaya, appearing on behalf of the petitioner - Corporation and learned Advocate, Mr.D.V.Shah, appearing on

behalf of respondents - workmen.

2. In this group of petitions, the petitioner – Bhavnagar Municipal Corporation has challenged the common order passed by Labour Court, Bhavnagar in Recovery Application No.160/2001 to 163/2001 dated 24th October,2002, whereby, the Labour Court, Bhavnagar has granted the benefit of Nursing Allowance, Uniform Allowance and Washing Allowance in favour of respondents of Rs. 38,850/- to each respondent. Initially, rule has been issued by this Court on 16th December,2003 and meanwhile, interim relief granted against the implementation of order passed by Labour Court, Bhavnagar.

3. Learned Advocate, Mr.R.M.Chhaya, appearing for the petitioner – Corporation has submitted that Labour Court has no jurisdiction to decide or adjudicate the disputed question while exercising power under Section 33-C(2) of I.D.Act,1947. He, however, submitted that with the consent of the Union, the said benefit was granted in favour of

respondents w.e.f. 1st April,2000. He also submitted that Government Resolution in respect to any kind of benefits straightway automatically not applicable to the Corporation. He also submitted that each and every Government Resolution is not binding to the Corporation but, the Corporation can accept it according to its financial condition. He also submitted that respondents – workmen have accepted the benefit as granted by the Corporation w.e.f. 1st April,2000 and thereafter, raised the objection before the Corporation and filed the Recovery Application subsequently. Therefore, he submitted that respondents are not entitled the said benefit as pre-existing right or undisputed due amounts from Corporation and, therefore, Labour Court has committed gross error in granting the benefit in favour of respondents from 1st January,1991 to 31st March,2000. He also submitted that Exh.14 letter, which was relied by Labour Court, was relating to one Bhaniben Makwana, who was not the employee of the Corporation and was paid the benefit on the basis of direction issued by the Health Department of Gujarat

State vide its letter dated 20th September,1993. Therefore, he submitted that Labour Court has committed gross error while coming to the conclusion that respondents are entitled the benefit on the basis of Exh.14 she is not similar situated employee and, therefore, Labour Court has also committed error in granting the benefit. He also raised contention that Labour Court has committed gross error in coming to conclusion that demand raised by respondents was not disputed or refused by the Corporation. He submitted that the demand raised by the respondents was refused and rejected by the Corporation, even though a wrong finding has been given by the Labour Court. Therefore, according to him, when respondents were not proved pre-existing right to receive such benefit as per Government Resolution from the Corporation, then, Labour Court has no jurisdiction to grant such benefit in favour of respondents.

4. Learned Advocate, Mr.D.V.Shah, appearing for the respondents has submitted that earlier three Resolutions dated 20th June,1981 where Rs.30/- was

granted by the Government as a Nursing Allowance; another Resolution dated 14th November,1980 where Rs.25/- was granted as Uniform Allowance and vide third Resolution dated 1st October,1986, Rs.75/- was granted by the Government as Washing Allowance. He submitted that in respect to these benefits which were already granted by Corporation in favour of respondents. He also submitted that there was no settlement with the Union by the Corporation and there was no consent given by the respondents – workmen to accept the said benefit w.e.f. 1st April,2000. He also submitted that witness of petitioner – Corporation has admitted that there was no settlement between Union and Corporation and, therefore, the Labour Court has rightly granted the benefit in favour of respondents, for which each respondent was entitled the said benefit. He submitted that Labour Court has not committed any error while granting the benefit in favour of respondents. He also submitted that once the State Government has decided to grant the various allowances, then, it will automatically applicable to

the Corporation and the Corporation should have to implement the same. He submitted that since the Corporation has not implemented the same w.e.f. 1st October,1986 and 1st December,1989, therefore, respondents workmen have filed Recovery Applications which were rightly allowed by the Labour Court. For that, according to him, the Labour Court has not committed any error.

5. Learned Advocate, Mr.Shah, has relied upon the decision of Hon'ble Division Bench of this Court in case of Lallubhai Bapujibhai Parmar Vs. Panchmahal District Panchayat,2005 (3) GLR 1907 and relying upon the said decision, he submitted that once the Government Resolution dated 17th October,1988 is applicable to the Panchayat and that fact was not disputed, then, to change the date of implementation, Panchayat has no right and, therefore, this Court has held that in such circumstances, Recovery Application demanding from the original date of implementation is maintainable and prior adjudication under Section 10(1) is not necessary. Except that, no other

submissions made by learned Advocate, Mr.D.V.Shah and no other decision relied by him.

6. I have considered the submissions made by both the learned Advocates and perused the common order passed by Labour Court, Bhavnagar dated 24th October,2002. I have also perused the Recovery Application filed by each respondent and affidavit-in-reply filed by respondents. I have also considered the Government Resolution dated 12th December,1989, 16th April,1988 and 15th September,1993, 20th September,1993 as well as the order passed by Corporation dated 31st July,2000, wherein, the benefit was given w.e.f. 1st April,2000. The objection raised by respondents workmen is at Page-62 and Page-64 vide letter dated 7th August,2000. Page-66 is the reply filed by Corporation against the Recovery Application filed by respondents workmen. The affidavit-in-rejoinder filed by petitioner dated 5th October,2003. Except that, there is no other documents on record in the present petitions. All the relevant record has been taken into account by this Court while

considering the submissions of respective Advocates. The main question raised by Corporation is that whether, under Section 33-C(2) of I.D.Act,1947, Labour Court has jurisdiction to grant such benefit relying upon Government Resolution to the respondents workmen or not? Before deciding the controversy and legal question whether, Labour Court has jurisdiction or not, the relevant Section 33-C(2) is required to be considered. Section 33-C(2) provides that where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then, the question may subject to any Rules that may be made in this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government. Now considering the aforesaid sub-section (2), the question of entitlement of the workman is to be established being a condition precedent and second thing that amount of money must be due or should be computed, then only Labour Court has jurisdiction.

Otherwise Labour Court has no jurisdiction to grant any benefit while exercising power under Section 33-C(2) of I.D.Act,1947. Now, in light of this Section itself, the Recovery Applications which have been filed by workmen before the Labour Court are necessary to be considered. Page-23 is the Recovery Application No.160 of 2001 of Vandanaben Navalbhai Vyas. In Para.3 thereof, claim has been made by respondent workman. The claim is that by different Government Resolutions, certain allowances like Nursing Allowance, Uniform Allowance and Washing Allowance are paid to District Panchayat employee working in Nursing Department, but similar benefit is not given by the Corporation to the respondent – workman. So the base to file Recovery Application was that such benefit was available to District Panchayat employee and same was not made available by the Corporation to the respondents workmen without any reason. Para.4 relating to that present applicant is also a Nursing employee. Therefore, he entitled the said benefit from the Corporation. For that, on number of occasions, written and oral submissions

were made, but ultimately, Corporation has granted such benefit w.e.f. 1st April,2000 by order dated 31st July,2000. Therefore, respondent – workmen are entitled the benefit as the benefit was paid to District Panchyat employee. In Recovery Application, there was no consent in settlement and Union was not authorized to settle the matter and there was some assurance given by Corporation that they will pay the arrears a moment the financial condition was improved of the Corporation. These are the Recovery Applications filed by respondents - workmen, wherein, nowhere it is mentioned by the workmen that they are entitled the said benefit on what basis whether any amount has been due legally in their favour or whether they are entitled to such amount by way of legal right. No averment has been made by the respondents workmen in Recovery Applications. In absence of these, merely reliance has been placed by respondents workmen that according to various Government Resolutions, the Nursing Allowance, Uniform allowance and Washing Allowance were paid to District Panchayat employee and said benefit was not

paid to the employee of the Corporation, though some of the employee of the Corporation are receiving said benefit. Therefore, considering these Recovery Applications, there is no base pointed out by respondents workmen that on this base or on this legal right, they are entitled the due benefit which can be computed in terms of money from the Corporation. So, according to my opinion, Recovery Applications itself are without base of pre-existing right. However, it is necessary to note that these applications were filed on 14th / 18th June,2001 by the respondents – workmen. On the same day, these four applications were filed on similar base by the respondents - workmen. Against that, petitioner – Corporation has filed reply which is at page-66 dated 14th February,2002. In the reply, the claim made by the respondents – workmen has been disputed and denied by the Corporation. In para.1, 2 and 3, a specific averment has been made by the Corporation that averments made in the Recovery Applications is not correct and not admitted by the Corporation. In reply, it is also made clear by Corporation that

whatever benefits are available to District Panchayat employee through Government, same are not available automatically to the employees of the Corporation. The Corporation has made clear in reply that w.e.f. 1st April,2000, the benefit has been made available to the respondents workmen and such benefit was accepted by the respondents – workmen. On that occasion, no objection was raised by the concerned employee and it was settled with the Union and on that basis, Resolution dated 31st July,2000 was passed by the Corporation. In written statement, Corporation has also disputed that such kind of Recovery Applications are not maintainable and respondents workmen have no legal right to file said applications and, therefore, same may be dismissed. The Resolution which has been passed by Corporation dated 31st July,2000 which is at Page-60 on record. In the said Resolution, the Corporation has referred various Government Resolutions in respect to Nursing Allowance, Uniform Allowance and Washing Allowance and specific decision has been taken that instead of the date mentioned in the Government Resolution, the Corporation is agreed

to pay such benefits w.e.f. 1st April,2000 and for that, necessary proposal was forwarded to the Secretary. This Resolution has been passed by the Commissioner and Chief Personnel Officer of the Corporation. In the said Resolution, one fact is important that respondents – workmen claimed said benefit from the Corporation w.e.f. 1st April,2000. Specific averments have been made in the Resolution that representation was made by the workmen and Bhavnagar Maha Mazdoor Sangh and as a result of such discussion, ultimately, according to their representation, benefit has been granted w.e.f. 1st April,2000. This fact has been disputed by the respondent workmen, but it is necessary to note here that Resolution passed by the Corporation dated 31st July,2000 granting the benefit as per their demand on 1st April,2000 accepted by them and subsequently, raised the objection by letter dated 7th August,2000. Thereafter, the respondents workmen have not filed any proceedings to challenge this Resolution dated 31st July,2000. After accepting the amount from the Corporation on the basis of their representation,

Recovery Applications filed on 18th June,2001 after a period of about one year. In between one year, respondents workmen have not challenged the Resolution dated 31st July,2000. If the facts mentioned in the Resolution dated 31st July,2000 by the responsible officer of the Corporation; one Municipal Commissioner and another is the Chief Personnel Officer and on that basis, benefit has been accepted by the respondents workmen. This Resolution dated 31st July,2000 issued by the two highest officers of the Corporation on the basis of Resolution passed by Standing Committee Resolution No.214 dated 30th June,2000. If the respondents workmen are disputing that there was no settlement and no representation to grant the benefit w.e.f. 1st April,2000, then, they should have challenged the particular Resolution dated 31st July,2000, but for that, Recovery Application is not maintainable. Once the decision, rightly or wrongly, has been taken by the Corporation, the Labour Court cannot examine legality and validity of the Resolution dated 31st July,2000 passed by Municipal Commissioner or Chief

Personnel Officer on the basis of the Standing Committing Resolution No.214 dated 30th June,2000 in exercise of powers under Section 33-C(2) of the I.D.Act,1947. The order passed by the Labour Court, Bhavnagar amounts to changing or setting aside the order dated 31st July,2000 passed by Corporation. The Labour Court, while exercising the power under Section 33-C(2) has no jurisdiction to pass or issue any direction which is contrary to Resolution dated 31st July,2000. The result of such direction amounts to setting aside the Resolution or decision of Corporation dated 31st July,2000.

7. The decision of the Hon'ble Division Bench of this Court relied upon by learned Advocate, Mr.Shah, as referred above. In that decision, it is not decided by the Division Bench of this Court that any kind of right if it is not disputed by other side, then, recovery is maintainable. The facts of the case before the Division Bench for implementation of Government Resolution dated 17th October,1988. There was no dispute raised by the Panchayat about the

applicability of Government Resolution dated 17th October,1988. In that case, the view taken by the Division Bench is that once the Government Resolution dated 17th October,1988 is applicable and accepted by the Panchayat, then, Panchayat has no right to deffer the date of implementation. In this case, Municipal Corporation has not accepted Government Resolutions. The Government Resolutions are not automatically applied to Corporation. The Government Resolutions are not binding to Corporation. The Government Resolution not applicable and accepted by Corporation. The date of Government Resolution differ with the consent of workmen and Union. The demand made by workmen to grant such benefits from 1st April, 2000. The resolution dated 31st July,2000 not challenged by workmen before any authority including State Government. This is the facts in the present case because here the decision has been taken by the Corporation with consent of workmen and Union as per their demand, to grant such benefit w.e.f. 1st April,2000 by Resolution dated 31st July,2000. Therefore, in such circumstances, the respondents

have only right to raise industrial dispute or to challenge the Resolution dated 31st July,2000 and to get the adjudication about their right or claim and then, to file such Recovery Application. Otherwise, straightway Recovery Application is not maintainable. The decision relied by learned Advocate, Mr.D.V.Shah, as referred above, is not applicable to the facts of this case.

8. The question of jurisdiction under Section 33-C(2) of I.D.Act,1947 has been examined by Apex Court in various cases (i) in case of Municipal Corporation of Delhi Vs. Ganesh Razak reported in 1995 (1) SCC 235, (ii) Tara Vs. Director, Social Welfare, (1998) 8 SCC 671 (iii) Punjab Beverages (P) Ltd. Vs. Ramchandra Dubey (2001) 1 SCC 73. These all the decisions of the Apex Court has been recently considered by the Division Bench of Himachal Pradesh High Court in case reported in Balbir Singh Vs. Nika Ram& Ors., reported in 2005 Lab.I.C. 4000, wherein, the Division Bench of the Himachal Pradesh High Court has considered the scope of Recovery Application and

entitlement of the workman and ultimately, come to the conclusion that amount if it is not payable either under a settlement or an award in accordance with law. This was not a sum determined in accordance with law, which would enable the Labour Court to have passed the impugned award. Assumption of jurisdiction by the Labour Court in these circumstances cannot be upheld and plea to the contrary urged by Sari Kaundal is liable to be rejected. In fact, Labour Court travelled beyond the scope of its authority under Section 33-C(2) of the Act, and as such the impugned award cannot stand the test of judicial scrutiny. The Division Bench of Himachal Pradesh high Court has, considering the decision of Apex Court, in case of Namor Ali Choudhury v. The Central Inland Water Transport Corporation Ltd. AIR 1978 SC 275. Para.10 of the said judgment is reproduced as under :

> “10. In Namor Ali Choudhury v. The Central Inland Water Transport Corporation Ltd. AIR 1978 SC 275 : (1978 Lab IC 166), while interpreting the provisions of Section 33-C(2) of the Act, it was held in para 4 of

the judgment as under:

'In our judgment the High Curt has committed an error in so narrowly interpreting S.33C(2) of the Act. The said provision runs as follows:

Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government. “There are two parts of the sub-section by Act 36 of 1964. The first part is concerned with the money claim simpliciter and the second part speaks about computation in terms of money of any benefit to which the workman is entitled. Although for appreciation of the point at issue there is no substantial difference between the two, we shall confine out discussion to the money claim only pure and simple. On a plan reading of the wordings of the Statute it would be found that where any workman is entitled to receive from

employer any money and if any question arises as to the amount of money due, then the question may be decided by the Labour court. The expression “if any question arises as to the amount of money due” embraces within its ambit any one or more of the following kinds of disputes :-

(1)Whether there is any settlement or award as alleged ?

(2)Whether any workman is entitled to receive from the employer any money at all under settlement or an award etc.?

(3)If so, what will be the rate of quantum of such amount ?

(4)Whether the amount claimed is due or not ?

Broadly speaking, these will be the disputes, which will be referable to the question as to the amount of money due. If the right to get the money on the basis of the settlement or the award is not established, no amount of money will be due. If it is established, then it has to be found out, albeit, it may be by mere calculation, as to what is the amount due. For finding it out, it is not necessary that there should be a dispute as to the amount of money due also. The fourth kind of dispute which we have indicated above obviously and literally will be covered by

> phrase “amount of money due”. A dispute as to all such questions or any of them would attract the provisions of Section 33C(2) of the Act and make the remedy available to the workman concerned.”

9. Recently also, the Hon'ble Apex Court as considered the question of jurisdiction of Labour Court under Section 33-C(2) of the I.D.Act,1947 in case of State of U.P. and Another Vs. Brijpal Singh, reported in (2005) 8 SCC 58. The relevant observations made by Apex Court is from Para 11 and 12, which are as under:

> “The workman can proceed under Section 33-C(2)only after the Tribunal has adjudicated on a complaint under Section 33-A or on a reference under Section 10 that the order of discharge or dismissal was not justified and has set aside that order and reinstated the workman. A proceedings under Section 33-C(2) is a proceeding in the nature of execution proceedings in which the Labour Court calculates the amount of money due to a workman from the employer, or, if the workman is entitled to any benefit which is capable of

being computed in terms of money, proceeds to compute the benefit in terms of money. The right to the money which is sought to be calculated or to the benefit which is sought to be computed must be an existing one, that is to say, *already adjudicated upon* or provided for and must arise in the course of and in relation to the relationship between the industrial workman and his employer. It is not competent to the Labour Court exercising jurisdiction under Section 33-C(2) to arrogate to itself the functions of an Industrial Tribunal and entertain a claim which is not based on an existing right but which may appropriately be made the subject-matter of an industrial dispute in a reference under Section 10 of the Act.

The Labour Court has no jurisdiction to first decide the workman's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognized by the employer and thereafter for the purpose of implementation that the interpretation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to

> the Lower Court's power under Section 33-C(2) like that of the executing court's power to interpret the decree for the purpose of its execution. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33-C(2) of the Act while the latter does not."

10. Section 33-C(2) of I.D.Act,1947 itself clear that such claim as staked by the workman should be an existing claim already adjudicated upon or provided for. If the claim itself disputed by the employer and has not already been adjudicated upon, the workman cannot claim such benefit under Section 33-C(2) of the Act. The computation of a claim which itself has not been settled, cannot be made by the Labour Court under Section 33-C(2). There in such claim Labour Court has no jurisdiction. (See : in case of Mining Engineer Mines & Geology Department, Bikaner Vs. Mala Ram & Anr. reported in 2006 Lab.I.C. 97, Rajasthan High Court); in case of Central Group and Others Vs. Motiram S. Thakore reported in 2006 I CLR 470, Bombay

High Court; in case of National Textile Corporation (UP) Ltd., Kanpur Vs. Presiding Officer, Labour Court IV, UP, Kanpur reported in 2006 108 FLR 536 Allahabad High Court, and in case of Regional Manager, Bank of Baroda Vs. Gitaben Haribhai Darji (D) by LRs and Others reported in 2006 I LLJ 404, Gujarat High Court).

11. It is also well settled that while deciding policy, the Government always considers financial implications which is the relevant criteria for determining benefits, which is to be granted to concerned employees. Recently, the Apex Court, in case of State of Andhra Pradesh & Anr. Vs. A.P. Pensioners Association & Ors. reported in 2006 Lab.I.C. 137, has considered the decision of Apex Court in case of State of Punjab & Others Vs. Amar Nath Goyal & Others reported in (2005) 6 SCC 754, upon consideration of a large number of decisions, the Apex Court has opined that the decision of a State to limit the benefits only to employees who retired or died on or after a particular date upon

calculating the financial implications thereof was neither irrational nor arbitrary. It was observed:

> “28. It is trite that, the final recommendations of the Pay Commission were not ipso facto binding on the Government, as the Government had to accept and implement the recommendations of the Pay Commission consistent with its financial position. This is precisely what the Government did. Such an action on the part of the Government can neither be characterized as irrational, nor as arbitrary so as to infringe Article 14 of the Constitution.”

12. Recently, the Bombay High Court, in case of Maharashtra Rajya Shetki Mahamandal Karmachari Sanghatna Vs. M.D.Maharashtra State Farming Corporation Ltd. & Anr., 2006 I CLR 467. in Para.7 has made following observations :

> “7. The Government of Maharashtra on its decision to revise the pay scales of the State Government employees pursuant to the IVth pay commission's recomme3ndations issued a

notification on 1st October,1988 in the name and by the orders of the Governor under Article 309 of the Constitution for amending the Maharashtra Civil Services (Pay Scales) Rules,1984. By the said notification the Maharashtra Civil Services (revised pay scales) Rules,1988 were brought into force and salaries of the State Government employees came to be revised. A perusal of the said notification clearly states that it was an amendment to the Civil Services Rules (Pay Scales) Rules,1981 and the said revision was not applicable to the employees of the State Government undertakings/corporation who are autonomous bodies and distinct legal entities. A notification issued under Article 309 of the Constitution of India cannot revise the pay scales and other benefits of the employees of the State Government undertakings/corporation unless it states so specifically and/or it has been extended to such employees. It cannot be made applicable to autonomous bodies automatically and therefore, there cannot be any failure attributable to the respondents in the implementation of such a resolution for revision in pay scales. The notification also does not state that it applies to the employees of the State Government undertakings/corporations. It is thus clear

that the corporation cannot be held guilty of failure to implement the notification dated 1st October,1988 and therefore it cannot be held guilty to have engaged in unfair labour practice within the meaning of Item 9 of Schedule IV of the Act. The reasons set out by the Industrial Court in support of its conclusions dismissing the complaint cannot be termed as perverse or grossly erroneous so as to interfere in exercise of powers of superintendence under Article 227 of the Constitution of India."

13. One contention raised by Mr.Shah that similar benefit has been made available by the Corporation to one employee, namely, Bhaniben Makwana. Her order is on page-58 dated 20th September,1993. This letter dated 20th September,1993 was produced before the Labour Court, Bhavnagar by the respondents workmen at Exh.14. The facts that Bhaniben was not an employee of the Corporation which is not in dispute. She was sent on deputation from the Government and working in ICDS Department of Bhavnagar Municipal Corporation. So, the case of Bhaniben Makwana and the respondents employees is not similar. Said Bhaniben Makwana was

an employee of the State Government and the respondents employees are the employees of the Corporation, then, naturally, once the Government has issued Resolution, the State Government employee working in Nursing Department must be entitled the benefit of such Resolution as a matter of legal right. But said legal right is not available to the respondents workmen being the employees of Corporation. The Labour Court has committed gross error in coming to conclusion on the basis of Exh.14 letter dated 20th September,1993 at Page-20 that because of said benefit was made available to said Bhaniben Makwana with retrospective effect on the basis of Government letter dated 20th September,1993, therefore, the respondents workmen have also established their pre-existing right of Exh.14 and they entitled the said benefit. This is a clear finding being perverse finding contrary to the record. The whole Recovery Applications were allowed by the Labour Court on the misconception of Exh.14 without inquiring whether, Bhaniben Makwana and respondents workmen are the employees of the

Corporation or not. The facts of Bhaniben Makwana being employee of the State Government has not been considered by Labour Court, Bhavnagar. Therefore, according to my opinion, the Labour Court has committed gross error in passing the order beyond its jurisdiction and without application of mind. The resolution dated 31st July,2000 passed by the Corporation is till date not challenged by the respondents workmen. Therefore, so long that resolution remains in existence, or not modified by Corporation or any other legal authority, that is binding to respondents workmen unless they challenged before appropriate authority or forum. Therefore, according to my opinion, Labour Court has committed gross error in allowing said Recovery Applications in favour of respondents workmen. Therefore, order passed by Labour Court, Bhavnagar dated 24th October,2002 in Recovery Application Nos.160 of 2001 to 163 of 2001 is required to be set aside.

14. In result, all these petitions are allowed. The order passed by the Labour Court, Bhavnagar dated 24th

October,2002 in Recovery Application Nos.160 of 2001 to 163 of 2001 is hereby quashed and set aside. Rule made absolute with no order as to costs.

15. However, since this Court has not examined the entitlement of the respondents – workmen while passing this order, if the respondents – workmen thought it fit, they may raise industrial dispute under the machinery of I.D.Act,1947 and they can challenge the Resolution dated 31st July,2000 passed by the Corporation or may make claim on the basis of the Government Resolution by raising industrial dispute before the appropriate authority. If they will raise such a dispute according to law before appropriate authority, this decision will not come in their way.

(H.K.RATHOD,J.)

(vipul)